

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0284P

**Income Tax
Calendar Year 1995**

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ISSUE

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer, in a letter dated April 1, 1999, protested the penalty assessed on an income tax assessment for calendar year 1995 that resulted from an audit performed for the calendar years 1992 and 1995.

The taxpayer was engaged in the manufacture and sale of auto, truck, and marine batteries. On March 24, 1995, the taxpayer sold all of its assets with the exception of the building in Indianapolis. The assets sold included assets within and without Indiana.

DISCUSSION

The taxpayer argues the penalty should be waived as the taxpayer has been timely in reporting and remitting tax liabilities.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or

regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

As the taxpayer failed to report the sale of assets in 1995, the Department finds the taxpayer was inattentive of their tax duties and therefore negligent. As negligence is subject to penalty, the penalty protest is denied.

FINDINGS

The penalty protest is denied.

TB/RAW/MR 991409